

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 93 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL BHOLABHAI ISHWARBHAI

Versus

PATEL GOVINDBHAI NAROTTAMDAS  
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Appearance:

MR SR SHAH for Petitioner

MR AJ PATEL with MS SHITAL R PATEL for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/03/2000

ORAL JUDGEMENT

#. Rule. Mr.A.J.Patel waives service of Rule on behalf of respondents.

#. Heard the learned counsel for the parties. This

civil revision application under section 115 of the Civil Procedure Code, 1908, arises from the order passed by the learned 3rd Extra Assistant Judge, Mahesana, below ex.11, in Civil Misc. Appeal No.2 of 2000, dated 20.1.2000.

#. The facts of the case are that the respondents-plaintiffs filed Regular Civil Suit No.26 of 1999 praying therein that the defendants-petitioners may be restrained from making any further construction on the foundation laid of latrine and bathroom. The plaintiffs-respondents filed application ex.5 for grant of temporary injunction which came to be rejected by the learned trial court. The plaintiffs-respondents challenged that order in appeal and under the impugned order that came to be allowed and temporary injunction as prayed for has been granted. Hence this civil revision application.

#. The learned counsel for the petitioner contended that the first appellate court has committed serious error of jurisdiction in reversing the order of the learned trial court. It has next been contended that the land over which the defendants-petitioners propose to put construction is his own property. Next it has been contended that permission has also been granted by the Gram Panchayat for putting this construction by the defendants-petitioners.

#. On the other hand, the learned counsel for the petitioner supported the order of the learned first appellate court.

#. Having given my thoughtful considerations to the rival contentions made by learned counsel for the parties, I do not find any perversity in the order passed by the first appellate court which calls for interference of this court under section 115 of the Civil Procedure Code. Two maps which have been shown by learned counsel for the parties and they are in agreement that these are the part of record of the suit. Prima-facie I find that the construction which is proposed to be put by the defendants-petitioners appears to be on part of the public road or vacant land left for the public purposes, etc. The permission for construction granted by the Gram Panchayat is of little help to the defendants-petitioners. This permission has been granted as what it is not disputed by the learned counsel for the defendants-petitioners subject to decision of the suit filed by plaintiffs-respondents. I fail to see any justification as well as propriety in the action of the Gram Panchayat to grant such permission where the parties

are litigating for their rights in the civil suit. That prima-facie shows that in the Gram Panchayat the persons favourite to the defendants-petitioners are there. The learned counsel for the petitioner has failed to show how this land is his own land. Looking to the situation of the land as what said earlier and it is to be stated at the cost of repetition that prima-facie it is an encroachment on the public road or vacant land left for the public purposes.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged. In the facts of the case, no order as to costs. However, before parting with this order it is to be made clear that whatever findings given or observations made by the first appellate court or by this court in the orders and judgments are only provisional and tentative for the purpose of deciding ex.5. Any of the court has not decided the matter finally on merits. The learned trial court, while deciding the suit finally may not be influenced by the observations and findings given by the first appellate court or by this court in this civil revision application.

(S.K.Keshote, J.)

(sunil)